

## **REMARKS**

### **I. Examiner Interview Summary**

On 18 January 2008, the undersigned conducted a telephone interview with the Examiner to discuss the *Restriction* presented in the *Office Action*. The Applicant and undersigned thank the Examiner for his time in discussing the matter. During the interview, the undersigned demonstrated to the Examiner that the alleged inventions delineated in the *Office Action* are not related as “combination and subcombination,” and therefore not distinct and the *Restriction* should be withdrawn. The Examiner indicated that he would discuss the undersigned’s arguments with the Primary Examiner. On 28 January 2008, the Examiner contacted the undersigned and stated that the Primary found the undersigned’s arguments persuasive, but the Primary believed the claims may still be restrictable for other reasons. The undersigned asked the Examiner why the alleged inventions were believed to be distinct and the basis for the a new restriction, but the Examiner was unable to provide a reason.

The Applicant respectfully asserts that the *Restriction* should be withdrawn. The Applicant’s arguments as to why the present *Restriction* is improper have been admitted by the *Office* as persuasive. Therefore, the *Restriction* cannot be maintained and must be withdrawn. If the *Office* maintains that the claims are restrictable for reasons other than those presented in the *Office Action*, the Applicant invites the Examiner to withdraw the present *Restriction* and to provide such new reasons for restriction in a subsequent *Office Action*.

### **II. Election/Restriction Requirement**

In the *Office Action*, the Examiner restricts Claims 1-27 into the following two alleged invention groups:

Invention I: Claims 1-14 drawn to a site controller for monitoring remote devices; and

Invention II: Claims 15-27 drawn to a system and method for selecting up-stream and down stream paths for transferring data.

In response, **Applicant provisionally elects Group II with traverse**. During a telephone interview with the Examiner, the *Office* stated that Applicant’s arguments below illustrating that the alleged Inventions are not distinct have been deemed persuasive. Applicant respectfully submits that in light of these arguments the present *Restriction* cannot be maintained and must be withdrawn.

The alleged Inventions I and II are not related as “combination and subcombination” as indicated in the *Office Action*. MPEP § 806.05(a) states that “[A] combination is an organization of which a subcombination or element is a part.”

Claim 1 of alleged Invention I is directed to a site controller. Claims 15 and 23 of alleged Invention II are directed to a method for controlling communication and a site controller respectively. Applicant respectfully submits that the site controller of Claim 1 is not an organization of which the method of Claim 15 is a part. Indeed, a method cannot be a “part” of a physical device. Further, Claims 1 and 23 describe varying scope of the same device. Therefore, the site controller of Claim 23 is not a part or element of the site controller of Claim 1.

For at least these reasons, Applicant respectfully submits that alleged Inventions I and II are not related as combination and subcombination, and are not distinct for the reasons stated in the *Office Action*. Consequently, the *Restriction* is improper and Applicant requests that it be withdrawn.

### **III. Fees**

Applicant files this *Response* within one month of the *Office Action*, and does not change the number of claims. Therefore, no extension of time or additional claim fees are believed due. Applicant expressly authorizes the Commissioner, however, to credit any overpayment or charge additional fees due to deposit account 20-1507.

#### **IV. CONCLUSION**

Applicant respectfully submits that after entry of this *Response* the *Restriction* should be withdrawn and the Application is fully in condition for allowance. The Examiner is invited to contact the undersigned should any other issues remain prior to the allowance of this Application. Early and favorable action is respectfully requested.

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